

North-State Telephone Company

June 20, 2005

Ms. Marlene Dortch
Office of the Secretary
Federal Communications Commission
445-12th Street, SW
Room TW-A325
Washington, DC 20554

RE: CC Docket No. 96-45
USAC Letter Dated June 3, 2005

This letter is to appeal USAC's adjustment to North-State Telephone Company's (North-State) 2001 LSS payments and to request a Declaratory Ruling regarding the interpretation of 47 CFR Part 36.125(a)(5).

Background:

- On October 1, 2004 USAC sent a letter to us indicating that North-State's 1996 weighted DEM factor exceeded the 85% cap and that there was an error in the LSS computation. (See Attachment 1)
- On October 5, 2004 North-State faxed an authorization to release data to USAC asking that they immediately send the original and USAC's revised calculation of the 2001 LSS to our consultant GVNW. (See Attachment 2). USAC faxed the input data to GVNW, but it was not legible so GVNW followed up with a call to USAC. USAC sent an e-mail containing the data, but refused to provide the calculations they performed.
- On October 6, 2004 North-State sent a letter to USAC indicating their original letter was confusing and that they were attempting to put Caps in computations that are inconsistent with the FCC's Rules. (See Attachment 3)
- On October 27, 2004 USAC responded with some clarification that it was the sum of the LSS factor and the unweighted DEM factor that was limited to 85% and that if the sum exceeded 85% an adjustment is made to the LSS Factor. USAC also indicated the Company could appeal USAC's adjustment either to USAC or to the FCC. (See Attachment 4)
- On November 8, 2004 we filed an appeal with USAC demonstrating that the sum of the LSS and the 2001 unweighted DEM did not exceed the 85% cap and thus the company's LSS for 2001 should not have been adjusted. (See Attachment 5)

- On February 9, 2005 USAC sent a notification that they had received the appeal and they expected to have a decision within ninety (90) days from the date of the letter. (See attachment 6)
- On June 3, 2005 USAC sent us their determination letter in which they denied the appeal. It was in this letter that we first found the issue causing the dispute. Specifically, USAC uses the 1996 unweighted DEM in performing the limitation test rather than the current year (in this case the 2001) unweighted DEM. (See Attachment 7).

Discussion

We believe that USAC is in violation of Part 54.301(a)(3) of the Commission's Rules. Specifically, the Part 54.301(a)(3) requires the use of the unweighted DEM as defined in Part 36.125(a)(5). There is no provision in the language of this rule which supports the interpretation that Part 36.125(a)(5) uses 1996 dial equipment minutes.

In USAC's June 3, 2005 letter it is not clear if USAC is actually interpreting the rule incorrectly, or if they are trying to shift the responsibility for not following the rule to the FCC or OMB because the data collection form does not ask for the current year's DEM. In either case, we believe the rules should be administered as written.

If it is USAC's interpretation that the rules require the use of the 1996 weighted DEM in the limitation test, we dispute their interpretation and ask the Commission to issue a declaratory ruling. In the following, we offer support for the position that Part 36.125(a)(5) is not defined as the 1996 unweighted DEM:

- On February 26, 1998 our consultant Kenneth T. Burchett from GVNW had an ex parte meeting with the FCC staff to discuss the specifics as to how the newly adopted LSS rules were to work. A four page model was discussed which clearly lays out the computations. In that presentation the limitation test was illustrated and the DEM was defined as the current year DEM. See pages 1 and 2 of the attachment 1 included with the ex parte filing. (Ex parte Filing, please see attachment 8)
- NECA administers the common line and traffic sensitive pool requiring the use of the current year DEM for developing the local switching factor. They have required this since 1998 as documented in their requirements to all pool participants.
- We are aware of no FCC rule or Order that would change the definition of Part 36.125(a)(5) to be the 1996 DEM.

If USAC is arguing that they don't have the authority to collect the data required to perform the limitation in accordance with the rules, we ask the Commission to take the steps that are necessary to authorize USAC to collect this data.

We believe it was the Commission's intent to link the LSS computation to the Local Switching computation used in the allocation of Central Office Equipment Category 3 Investment. We believe that two administrative bodies (i.e. NECA and USAC) should not be administering the same rule with different interpretations. If it is determined that USAC's procedures are consistent with the rules, we ask that the Commission order NECA to allow any companies that are adversely impacted by NECA's interpretation to correct their data and receive settlements for all periods affected.

Summary

In summary, we ask the Commission for a Declaratory Ruling regarding the interpretation of Part 36.125(a)(5), whether it is interpreted to require 1996 data as administered by USAC, or current year data as administered by NECA.

If the Commission holds that USAC's method is correct, we ask that the Commission allow all companies that were adversely impacted by NECA's requirement to use current year data rather than 1996 data, be allowed to make adjustments beyond the 24 month window on pooling operations, and resubmit their studies for settlements.

If the Commission holds that NECA's method and the method presented in the GVNW ex parte with the Commission are correct, we ask that the Commission take what ever steps are necessary to allow USAC the ability to gather the information required to properly administer the Commission's Rules.

Sincerely,

Gary Miller

CC: GVNW (Ken Burchett)
NECA (Jeff Dupree)
USAC